



## **Case Summary**

Appellant-Plaintiff Christina M. Striker (“Striker”) appeals the denial of her motion to correct error, which challenged the adequacy of damages awarded in her personal injury claim against Appellee-Defendant Courtney W. Sparkman (“Sparkman”). We affirm.

## **Issue**

Striker presents the sole issue of whether the trial court abused its discretion by denying her motion to correct error, whereby she sought additur or a new trial.

## **Facts and Procedural History**

On January 4, 2001, Striker was in her vehicle and had stopped for a traffic light at the intersection of U.S. 6 and Airport Road in Portage, Indiana. A vehicle operated by Sparkman struck Striker’s vehicle from the rear. Striker, then age seventeen, was taken by her mother to Porter Memorial Hospital. Striker was diagnosed as having sustained an acute myofascial strain of the cervical and lumbar areas of her back.

On December 20, 2002, Striker filed a complaint against Sparkman. Sparkman admitted liability for the automobile accident, and a jury trial on damages commenced on March 12, 2008. Striker sought reimbursement of \$14,259.36 in medical bills and unspecified sums for pain and suffering.

On March 13, 2008, the jury awarded Striker damages of \$6,500. Striker filed a motion to correct error, and the trial court conducted a hearing thereon. On June 18, 2008, the trial court denied Striker’s motion to correct error. Striker now appeals.

## Discussion and Decision

### I. Standard of Review

A trial court has wide discretion to correct error, and we will reverse only for an abuse of that discretion. Johnson v. Johnson, 882 N.E.2d 223, 226 (Ind. Ct. App. 2008). An abuse of discretion occurs when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences that may be drawn therefrom, or is based on impermissible reasons or consideration. Id.

A jury is to be afforded great latitude in making damage award determinations. City of Carmel v. Leeper Elec. Serv., Inc., 805 N.E.2d 389, 393 (Ind. Ct. App. 2004), trans. denied. A verdict will be upheld if the award falls within the bounds of the evidence. Id. The trial court may reverse a jury verdict only when it is apparent from a review of the evidence that the amount of damages awarded by the jury clearly indicates that the jury was motivated by prejudice, passion, partiality, corruption, or consideration of an improper element. Id.

A jury determination of damages is entitled to great deference on appeal. Clancy v. Goad, 858 N.E.2d 653, 657 (Ind. Ct. App. 2006), trans. denied. We will neither reweigh the evidence nor judge the credibility of the witnesses. Palmer v. Comprehensive Neurologic Services, P.C., 864 N.E.2d 1093, 1103 (Ind. Ct. App. 2007), trans. denied. The evidence will be looked at in a light most favorable to the award and we do not substitute our idea of a proper award for that of the jury. Id. Even where the evidence is variable or conflicting as to the nature, extent and source of the injury, the jury is in the best position to determine the

amount of damages. Id.

## II. Analysis

Striker contends that the damages award is inadequate because the jury failed to award her “undisputed actual medical expenses” of \$14,259.36 and appropriate sums for pain and suffering. Appellant’s Brief at 9. Striker presented evidence that she had, as of early 2008, incurred medical expenses of \$14,259.36 for treatment of back and neck pain. Striker also presented the deposition testimony of Dr. Chung Kim, who had examined Striker in 2006 and had formed the opinion that Striker suffered chronic pain as a result of the 2001 automobile collision.<sup>1</sup> Striker now argues that, in light of Sparkman’s failure to present contradictory expert testimony, her evidence was un-refuted and the jury awarded damages that were outside the bounds of the evidence presented.

Sparkman did not challenge the propriety of individual medical expenses; nor did he present the testimony of an expert witness. However, he elicited testimony tending to show that Striker did not require medical treatment as a result of the automobile collision after May of 2001.

On cross-examination, Striker testified that she saw her family physician in May of 2001 and reported that she was feeling “okay.” (Tr. 95.) Striker’s medical records also contained the notation by her treating physician at Steel Family Health Care Center, made on May 29, 2001: “At this point I think that she has reached her end point with respect to needing further treatment regarding this accident.” (App. 292). Striker’s medical bills as of

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<sup>1</sup> In Dr. Kim’s opinion, the pain was unlikely to be eliminated and Striker was not a surgical candidate.

that date amounted to \$3,331.50.

Striker also admitted that she had experienced a large gap in medical treatment for back or neck pain. She testified that she sought no treatment in 2003 or 2004. With the exception of a May 3, 2002 visit for problems with the lower lumbar region of her back, Striker did not seek medical treatment for pain between May of 2001 and March of 2005.

Sparkman argued to the jury, consistent with the foregoing evidence, that Striker's initial injury was resolved in 2001 and an appropriate award of damages would include Striker's medical expenses through 2001 of \$3,331.50 and a similar amount for pain and suffering. The jury awarded \$6,500. It appears that the jury intended to compensate Striker for her medical bills and pain and suffering up to and including her 2001 visit to Steel Family Clinic and release from treatment. The jury's award "will not be deemed the result of improper considerations if the size of the award can be explained on any reasonable ground."

Clancy, 858 N.E.2d at 657-58.

### **Conclusion**

The damage award was within the scope of the evidence presented at trial. The trial court did not abuse its discretion by denying Striker's motion to correct error seeking additur or a new trial.

Affirmed.

MATHIAS, J., and BARNES, J., concur.